

Notary Work Group

Meeting Minutes

Tuesday, June 12, 2018

Members in Attendance:

Assistant Secretary of State, Kathy Smith; Toby Musser, Delegate Richard Metzgar, Brian Webster on behalf of Penny Reed, Denise Pope, Shelly Gross-Wade, Ken Krach, Janelle Straszheim, M. Clare Schuller, Nick D'Ambrosia, Michael Kasnic, Alex Montanio, Frieda McWilliams, Rod Ritter, Kathie Connelly, Michael Chodos, David Shean, Bill O'Connell, Josaphine Yuzuik, Marquita Lewis, Michael Schlein

Members of the Public in Attendance:

Mindy Lehman, Maryland Bankers Association; Michol Bobb;

Welcome

Assistant Secretary of State, Kathy Smith, called the meeting to order at 1:05PM. She welcomed everyone to the second meeting of the 2018 Notary Work Group.

Introductions

Members of the Work Group introduced themselves. Attendance was taken and a quorum was established.

Approval of Minutes from May 8, 2018 Meeting

Assistant Secretary of State, Kathy Smith, asked if everyone reviewed the May 8, 2018 minutes. Members acknowledged they did. She asked if there were any edits, in the absence of any, she asked if there was a motion to approve the minutes. Nick D'Ambrosio made a motion to approve. Janelle Straszheim seconded the motion. Assistant Secretary of State, Kathy Smith, asked members to vote. The motion to approve the minutes was passed unanimously.

Maryland Notary Law, Regulations, and Handbook: Comments/Suggestions

Assistant Secretary Smith reminded Work Group members that participants will not receive any special access or benefit in its dealings with the State as a result of their willingness to participate on the Notary Work Group

Assistant Secretary Smith asked if the members reviewed the law, regulations, and handbook. Members said they had. She asked if any Work Group members to share their input on the law, regulations, and handbook. Bill O'Connell mentioned that he saw something in the Maryland law regarding notaries that he wanted to discuss but could not remember where it located in the Code.

Assistant Secretary Smith asked the Subgroups to report their progress.

Liability including: Record Keeping/Privacy/Liability of the Notary Report:

Liability Subgroup Reporter, Toby Musser, summarized their work to date. He reported the summary of work conducted by the liability subgroup. They concluded the work of the other Subgroups will impact liability. He asked for input from other Subgroups, as their work impacts liability. Assistant Secretary Smith invited input from the subgroup members and asked for comments from the Work Group. None were offered.

Identity Management including: Fees/Expenses/Necessary Tools/Education and Testing Requirements Report:

Identity Management Subgroup Member, Michael Schlein reported on behalf of Reporter, Lydia Williams. He reported the summary of work conducted by the Identity Management subgroup. They discussed the banks' concerns regarding Powers of Attorneys for the elderly; need to update the Handbook to provide better guidance regarding competency of a signer and what is required for record keeping; forms of acceptable identification; the possibility of education/testing to obtain or renew a notary commission; and fees. The subgroup concluded that education, in some form, should be required to become a notary. The subgroup concluded that continuing education or testing should be required for notary renewals and that fees should be capped.

Assistant Secretary Smith invited input from the subgroup members and the Work Group.

Denise Pope: The register was discussed in length at the subgroup.

Michael Chodos: Stated the Uniform Law gives explicit guidance and authority.

Assistant Secretary Smith: Suggested that education impacts every subgroup and might look at RULONA for tips.

Frieda McWilliams: The subgroup discussed the ability of a notary to judge competency.

Bill O'Connell: Commented on the ability to determine competency.

Ken Krach: Banks have a duty to report elder/financial abuse; nobody is an expert but we are all responsible. There are no standards.

Rod Ritter: He has to take tests all of the time regarding functions performed at his job but warned that legislators will not want to burden people.

Nick D'Ambrosio: Expressed concern about the burden and liability placed on a notary for education and questioning competency.

Shelly Gross-Wade: Asked how many complaints the Secretary of State receives.

Michael Schlein: Provided the approximate data, about 70, in the last fiscal year. He provided a broad overview of the nature, scope complaints, and an example of the types of violations reported. He advised that the Office of the Secretary of State used to send violators notary law to notary class conducted by a community college.

Bill O'Connell: Asked if the Secretary of State refers complaints to a criminal prosecutor.

Michael Schlein: Answered "yes".

Assistant Secretary Smith: Reminded everyone that the Secretary of State has only civil enforcement authority, the ability to revoke a notary's commission and nothing more; it cannot prosecute criminally.

Delegate Metzgar: Asked if the average notary knows what they're doing and why someone becomes a notary.

Assistant Secretary Smith: Advised that historically, Notaries hold this Office as a requirement of their profession e.g. lawyer, paralegal, realtor, banker, etc. She remarked that it seems the advent of Remote Notarizations is creating a new industry.

Rod Ritter: He acts as a notary for his business.

Janelle Straszheim: Mentioned that estates and trusts need a notary. She does not want to burden a notary with figuring out something that the law already deals with, speaking of competency of a signer. She asked if other laws get into competency.

Michael Chodos: Stated that Uniformed Law gives power to the notary to refuse to perform a notarial act if they are uncomfortable. He stated that the National Notary Association estimates that 100,000 of the 4 Million notaries in the United States are full time notaries, the rest are part time and perform the function as it relates to their job.

Frieda McWilliams: Warns to beware of the law of unintended consequences when it comes to competency. While there are avenues for determining competency, it can be burdensome.

M. Clare Schuller: Recommended keeping the burden lighter on traditional notaries as opposed to remote notaries, where the burden should be higher.

Michael Schlein: Provided an overview of the information covered when the Office of the Secretary of State conducts education for businesses, upon request. He provided an example of the content, e.g. a review of the notary law and the basics of notarizations. He shared the types of questions asked, including those about competency of the signer and how to handle those situations.

Ken Krach: Suggested that the law should explain that a notary can deny a notarization. The law should not put the competency burden on the notary. He suggested a sampling of examples and reasons why a notary may deny a notarization.

Rod Ritter: Stated that he would not feel burdened by an hour long class every 4 years.

Enforcement including: (including remote mechanisms) /Registration/Name Changes

Enforcement Subgroup Reporter, Kathie Connelly, summarized their work and recommendations to date:

1. Strengthen laws regarding identifying a signer, witnessing signatures, keeping a register.
2. Mandate education/test before becoming a notary.
3. Clarify that counterfeiting a public seal includes unlawfully or corruptly affixing a notary seal.
4. Remote Mechanisms: None at this time.
5. Registration: None at this time.
6. Notary Name Changes: Split name and address changes into two parts in this portion of the notary handbook. This prevents renumbering subsequent sections and gives an opportunity to elaborate on both changes.
7. What if the Notary had to register the notarization in a data base held by the State for all notarizations done with who, when, where, witnesses, etc. Ms. Connelly stated that this is an out of the box thought that was worth mentioning to the Work Group.

Assistant Secretary Smith invited input from the subgroup members and asked for comments from the Work Group.

Michael Chodos: Stated you need to make clear: what must a notary do and what to do if the notary commits a misdeed.

Josaphine Yuzuik: Asked if in any other state Mainained a database of notarizations performed in the State? Noted that such a registration system would include an incredible amount of data given the high volume of notarizations that must occur each day in the State of Maryland.

Michael Chodos: Stated that no other state requires reporting of all notarizations to a central location. This would create a privacy, cyber-security issue and a safety issue.

Kathie Connelly: The thought behind mentioning this out of the box suggestion was that if the notary had to answer to the controller of their license, they may be more responsible.

Assistant Secretary Smith: One way to instill responsibility is to bolster enforcement. Identifying what a register must include in the law and bolstering education would almost certainly yield positive results.

Kathie Connelly: Believes that what Assistant Secretary Smith said would solve the problem about responsibility.

Assistant Secretary Smith: Explained the removal process for notaries and gave examples of a notary who fingerprints their signers contrasted with a notary who doesn't keep a register, "real harm is done to real people."

Denise Pope: Asked about the company's record keeping responsibility as it relates to their notaries.

Assistant Secretary Smith: Responded that it is the individual notary's responsibility to keep their fair register. She offered that she was informed that not all banks offer notary services and that some notaries act independently,

although employed by a bank. She iterated again that education is important. The question is when, how often, and by whom? She stated a provider of educational services should be reputable, well established, well known institutions. She instructed the group to review this issue further.

Josaphine Yuzuik: Explained that she has a proposal to update the name change provisions. She circulated the paper to Work Group. She suggests splitting the name change and address change sections into separate categories.

Michael Chodos: Some states take on education themselves, others approve third parties to educate notaries.

Assistant Secretary Smith: Asked the Work Group to think about Chodos' comments. Resources are needed to implement.

Delegate Metzgar: Could education be accomplished without a bill?

Assistant Secretary of Smith: Answered "yes" to Delegate Metzgar but the question is how to do it. The Office of the Secretary of State currently educates, upon request. The issue is one of logistics...how to deliver education to 80,000 notaries with two (2) notary officers.

Frieda McWilliams: Explained that she was asked to notarize for a co-worker for a personal matter. The signer couldn't believe no education was required.

Assistant Secretary Smith: Offered criteria for third party education options that should be considered. She said that education must be provided by a well-established, well-recognized institution.

Michael Schlein: Explained that community colleges offer classes and that there are some online vendors that would likely create a Maryland-specific notary class. One potential issue could be access to a class for notaries that are not in the Baltimore or Washington, DC metropolitan areas. Online educational services could be a remedy.

Bill O'Connell: Stated there are questions on the Notary application already that cover basic issues, why not enforce it?

Assistant Secretary Smith: Explained that some notary applicants indicate that they read the notary handbook. In fact, when notaries find themselves in violations, they claim they didn't know what was in the law and handbook. She compared it to user agreements that are often signed without reading the agreement because it is too long.

Bill O'Connell: Referenced Title Insurance Producers and real estate agents requiring continuing education. The Maryland Insurance Administration outsources education to a vendor.

Remote Notarizations including: Cost of Technology/Financial Transactions

Remote Notarization Subgroup Reporter, Nick D'Ambrosio, summarized their work to date.

Nick D'Ambrosio: Summarized his notes to the group. The group examined a memorandum prepared by Clare Schuler, based on her research into the VA remote notarization statute and associated federal technology standards. He reviewed 10 questions considered by his subgroup. He advised that the subgroup will review the top few answers and create recommendations for the greater Work Group.

Assistant Secretary Smith invited input from the subgroup members and asked for comments from the Work Group.

Michael Chodos: Stated that Mortgage Bankers Association and American Land Title Association (MBA/ALTA) created a model act which was circulated.

Nick D'Ambrosio: Stated the subgroup's work is focused on remote notarizations since there a process for regular notarizations exist.

Assistant Secretary Smith: Cautioned that it is easy to be overwhelmed with the scope of work and volume of material. She asked Work Group members to keep in mind that remote notarizations, as presented by MBA/ALTA, considers land and title notarizations, notarization impact many other stakeholders including guardianships, estates, the frail and vulnerable populations. She was advised by someone on the Work Group that 1 state enacted remote notarizations but only for land/title notarizations.

Michael Chodos: stated that he is unaware of a state that limits remote notarizations to land/title notarizations.

Bill O'Connell: He is aware of a model act that allows you to carve out certain topics where you cannot perform a remote notarization.

Assistant Secretary Smith: Informed the group that states have different laws regarding the powers of a notary. One example offered is that notaries in Maine are authorized to officiate at weddings, a Maryland notary is not.

Bill O'Connell: Stated that if you get married under one state's laws, you are married under our law. If you follow the law in another state, your documents are acceptable here.

Frieda McWilliams: Asked Bill O'Connell if he always assesses the validity of a notarization performed in another state when reviewing documents.

Bill O'Connell: Answered Frieda McWilliams question by saying "no", that if he is confident in the notarization, he does not always check.

Assistant Secretary Smith: Advised jurisdiction and state's rights matters relate to remote notarizations.

Denise Pope: Asked if education falls into the ID Management subgroup.

Assistant Secretary Smith: Answered Denise Pope by saying "yes" but that it is part of all Subgroups.

Michael Chodos: Asked about the desire to raise/change fees if we were to re-write the law.

Assistant Secretary Smith: Asked the Identity Management subgroup to examine fees further.

Public forum:

Mindy Lehman asked if the Work Group was aware of the bills that were introduced in prior years. Assistant Secretary Smith advised Ms. Lehman Work Group were aware.

Michol Bobb commented on education fees charged at community colleges.

Prior to adjourning, Assistant Secretary Smith asked Dave Shean if he suggested the vendors make a presentation to the Work Group.

Dave Shean: Answered "no" to the question.

Next Steps

Assistant Secretary Smith iterated again that education impacts every subgroup and that each subgroup may look at RULONA for tips as related to their subgroup. She proposed that each subgroup dig deeper and be prepared to report in July. She reminded the Work Group the next meeting is the 2nd Tuesday of July (July 10, 2018)

Adjournment:

Assistant Secretary Smith thanked everyone for their efforts.

The meeting adjourned at 2:55 P.M.